IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

FAO.No. 282 of 2006()

AGAINST THE ORDER DATED 30/09/2006 IN IA 3585/04 IN OS.416/2002 of ADDL.SUB COURT,KOTTAYAM

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APPELLANT/PETITIONER/DEFENDANT:

V.O.THOMAS,
JOLLY VILLA FROM VATTAMALA KOTHALAKARA,
KOOROPPADA VILLAGE, KOTTAYAM TALUK,KOTTAYAM DIST.
NOW WORKING AT T.S.D./N.T.P.C. AND NOW RESIDING AT
V-B-201, SHAKTHI NAGAR, P.O. SENOBBADRA,
UTTER PRADESH-231222.

BY ADV. SRI.T.K.PANKAJASHAN PILLAI
SRI.P.R.PADMANABHAN NAIR
SRI.SAJI PANKAJAKSHAN

RESPONDENTS: RESPONDENT/RESPONDENT/PLAINTIFF:

MATHEW K.VARGHESE @ SAJI,
KANNANTHANATHU HOUSE, KOTHALA KARA,
KOOROPADA VILLAGE.

BY ADV. SRI.S.SREEKUMAR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & T.R.RAMACHANDRAN NAIR, JJ.

F.A.O.No.282 of 2006

Dated this the 10th day of August, 2007

JUDGMENT

Kurian Joseph,J.

The appeal is filed against the order in I.A.No.3585/2004 in O.S.No.416/2002 on the file of the Additional Sub Court, Kottayam. As per the said order the court below dismissed the application to set aside the ex parte order. The trial court took the view that the appellant herein was aware of the pendency of the suit and he was purposefully evading service. However, the records show that the plaintiff himself was aware of the fact that the appellant-defendant was in Uttar Pradesh. But the notice issued from the court is in the local address at Kottayam. The substituted service by way of publication is also in a regional newspaper namely Deepika of Kottayam edition. Thus it cannot be said that the notice was duly served on the appellant herein. Having regard to the entire facts and circumstances of the case we are of the view that it is only in the interests of justice that an opportunity is given to the appellant to defend the case on merits since it has come out from the records that there was no due service of notice on the appellant. Accordingly we set aside the order in I.A.No.3585/2004 in O.S.No.416/2002. The interlocutory application

will stand allowed. The appellant will file a written statement within a period of one month from today. Thereafter the trial court shall dispose of the suit within another four months.

2. It is seen that pursuant to interim order dated 15-12-2006, the respondent-plaintiff has been permitted to withdraw 50% of the amount deposited on the undertaking to refund the same with 10% interest in case the appeal is allowed. We make it clear that the said order shall be an order in respect of the suit itself and in case the suit is dismissed, the respondent will refund the amount already withdrawn along with 10% interest from the date of withdrawal.

The appeal is disposed of as above.

(KURIAN JOSEPH, JUDGE)

(T.R.RAMACHANDRAN NAIR,JUDGE)

ahg.